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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,223	11/25/2003	Josef Glockl	156.003US01	9192
27073	7590	10/11/2006	EXAMINER	
LEFFERT JAY & POLGLAZE, P.A. P.O. BOX 581009 MINNEAPOLIS, MN 55458-1009			LAUX, JESSICA L	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/723,223	Applicant(s) GLOCKL, JOSEF	
	Examiner Jessica Laux	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment is made of applicants response filed 08/22/2006. Accordingly the specification, drawings, and claims have been amended. Claims 23-24 have been cancelled. An examination of claims 1-22 is below.

Response to Arguments

Applicant's arguments filed 08/22/2006 have been fully considered but they are not persuasive.

Applicant argues that the specification on pages 2 and 3 clearly define what is meant by "sealing means".

Examiner disagrees. The specification on pages 2 and 3 merely discloses "sealing means" without any further discussion as to what is meant by such a limitation.

Claim Rejections - 35 USC § 112

Claims 1-2 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1

- it is unclear how the floor construction of the present invention is "continuously changing", as the definition of changing is: in a state of becoming different. (i.e. How is the floor construction in a continuous state of becoming different?)

Art Unit: 3635

- the limitation "human perception" is vague and indefinite as each human has a different perceptions.
- it is unclear how the surface portions are unforeseeable as the common definition of unforeseeable is: incapable of being anticipated.

Claim 2

- it is unclear how different surface portions (as in claim 1) remain different when they are from the same material and also surface portions with different inclusions cast therein remain unforeseeable.

Claim 17

- It is unclear what is meant by "sealing means".

In view of the above mentioned indefiniteness an examination of the claims, as best understood by the examiner, is presented below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 12-13, and 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kupfer (4620816).

In regards to claim 1: Kupfer teaches a floor construction comprising: a plurality of surface portions (col. 4, lines 40-43), each comprising at least one respective material

Art Unit: 3635

with different properties, the properties in regard to human perception when stepping on the surface portions, characterized in that different surface portions are of such an arrangement and configuration that when moving on the floor construction a continuously changing, unforeseeable sequence of different surface portions has to be unavoidably stepped on (Abstract).

In regards to claim 2: The floor construction according to claim 1 above, wherein the surface portions are each formed from the same material (Abstract, lines 15-17), thus providing a unitary, externally homogeneous surface, but that incorporated into the surface portions are identical or different inclusions cast therein so that when the surface portions are stepped upon overall different tactile stimuli are produced (Abstract, lines 17-19).

In regards to claim 3: The floor construction according to claim 1 above, wherein the surface portions represent portions of the floor construction that are separate from each other (Col. 4, lines 55-58).

In regards to claim 4: The floor construction according to claim 1 above, wherein the surface portions differ from each other in respect to at least one of shape and size (Col. 5, lines 5-8).

In regards to claim 5: The floor construction according to claim 1 above, wherein the properties comprise a degree of a surface roughness (Col. 4, lines 40-47).

In regards to claim 6: Kupfer teaches that it is known to have a walking surface with a plurality of surfaces with different properties that are stepped on as in claim 1 above. The surfaces would have different tactile properties such as a smooth concrete

Art Unit: 3635

sidewalk (a solid material) with embedded pebbles or stones (a loose material) in a portion (col. 1, lines 43-53).

In regards to claim 12: The floor construction according to claim 1 above, further comprising an upper construction (element 18) that contains the surface portions and is supported by a sub-construction (element 20).

In regards to claim 13: The floor construction according to claim 12 above, wherein the sub-construction is a flexible material (col. 4, lines 37-39, wherein grass is flexible).

In regards to claim 15: The floor construction according to claim 1 above, wherein the floor construction can be used in at least one of inside and outside spaces (Col. 4, lines 26-39, where the walkway could be used inside or outside).

In regards to claim 16: The floor construction according to claim 1 above, wherein the floor construction is suitable for laying on conventional floor coverings (Col. 4, line 30).

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Doose (DE 4021958 A1).

In regards to claim 1: Doose teaches a floor construction comprising: a plurality of surface portions (element 1), each comprising at least one respective material (paving stones, Abstract line 13) with different properties, the properties in regard to human perception when stepping on the surface portions, characterized in that different surface portions are of such an arrangement and configuration that when moving on the floor construction a continuously changing, unforeseeable sequence of different surface

Art Unit: 3635

portions has to be unavoidably stepped on (Abstract, lines 1-3, characterized in that the paving block with deflect when stepped on).

In regards to claim 7: The floor construction according to claim 1 above, wherein at least one of the surface portions comprises tilting elements and the tilting elements of the at least one of the surface portions are movably mounted such that when a person steps thereon at least one of the surface portions and tilting elements change position by tilting (Figure 6; Abstract, lines 1-3).

Claims 1, 9-11 and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Streit et al (5542221).

In regards to claim 1: Streit et al. teaches a floor construction having a plurality of surface portions, each comprising a least one respective material (Col. 2 lines 27-29 and 60-61).

In regards to claim 9: Streit et al. teaches a floor construction as in claim 1 above, wherein at least one surface portion (element 3) further comprises a plurality of perpendicularly standing bar portions (element 4 and Col. 3, lines 61-63).

In regards to claim 10: Streit et al. teaches a floor construction as in claim 1 above, further comprising bar portions (element 4) having different degrees of stiffness (Col. 4, lines 65-end and Col. 5, lines 1-5).

In regards to claim 11: Streit et al. teaches a floor construction as in claim 1 above, further comprising groups of bar portions (element 4) having different degrees of stiffness (Col. 4, lines 65-end and Col. 5, lines 1-5) arranged in a surface portion (element 3 and col. 3, lines 61-63).

Art Unit: 3635

In regards to claim 17: Streit et al. teaches a floor construction as in claim 1 above, further comprising a sealing means (Col. 2, lines 60-66; Figure 5, elements 1 and 2) disposed between adjacent surface portions.

In regards to claim 18: Streit et al. teaches a floor construction as in claim 1 above, wherein a transition between different surface portions is effected in an edge-free manner (Col. 2, lines 60-66).

Claims 1, 12 14 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Donovan (4557475).

In regards to claim 1: Donovan teaches a floor construction having a plurality of surface portions (element 16, Col. 2, line 44), each comprising at least one respective material, wherein the floor construction is stepped on.

In regards to claim 12: Donovan teaches a floor construction as in claim 1 above, further comprising an upper construction (element 18) that contains the surface portions (element 16) and is supported by a sub-construction (element 32).

In regards to claim 14: Donovan teaches a floor construction as in claim 12 above, wherein the upper construction comprises a foam (Col. 2, line 25) containing different materials.

In regards to claim 22: Donovan teaches a floor construction as in claim 1 above, wherein the floor construction is capable of being used as a child's play mat. The limitation "use of the floor construction" is an intended use, as Donovan's floor construction is capable of being used in such a way the claim limitations are met.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kupfer (4620816) in view of Hydock (10/087318).

In regards to claim 8: Kupfer teaches a floor construction as in claim 1 above, but does not teach that the surface portion comprises a heating or cooling means that heats or cools the surface. Hydock teaches a radiant heat flooring system that provides means for heating the surface of a floor construction (Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the floor construction of Kupfer to have radiant heat as taught by Hydock as it would keep the feet of the walker on the surface warm in cold weather.

In regards to claim 19: Kupfer teaches a floor construction as in claim 1 above but does not teach the floor to have closed internal space filled with a liquid. Hydock teaches a floor construction having conduit within the floor panels to be filled with a liquid (paragraph 0091 and paragraph 0097, line 8 wherein antifreeze changes viscosity when it changes temperature).

In regards to claim 20: The floor construction according to claim 19 above, wherein the liquid substance is oil like (antifreeze is oil-like).

Art Unit: 3635

In regards to claim 21: Kupfer teaches a floor construction as in claim 1 above, but does not teach the construction to have closed internal space in the surface portions connected in a mutually communicative relationship. Hydock teaches a radiant floor structure having conduit (21) within the floor panels (16) in a communicative relationship (paragraphs 0086 – 0088) and the filled with a material having a viscosity, wherein the fluid is water (paragraph 0097).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 8:30am to 4:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571-272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JL
09/26/2006



NAOKO SLACK
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600